NOTES

THE BANKRUPTCY ADJUDICATION AS A JUDGMENT IN REM.—Ever since the Supreme Court made remarks to that effect in a case arising under the Bankrupt Act of 1841[1] it has been a favored saying that an adjudication of bankruptcy is a judgment *in rem* and good as against the world, wherefore it binds even those who had no part in the proceedings leading to the adjudication. The influence of this suggestion has gone far, so far, indeed, that though several years ago the Supreme Court expressly confined the idea within its proper limits[2] and some courts grasped the necessary distinction in time to escape error,[3] it again has been necessary for our highest court to state, in *Gratiot County Bank* v. *Johnson* (1919) 39 Sup. Ct. 263, the meaning of this vexatious expression. On that occasion, be it noted, the Court not merely reversed the decision of the highest court of Michigan,[4] but also overruled several decisions of the lower federal courts.[5] It was also incumbent upon the Supreme Court itself to explain several of its own decisions[6] of date later than the pioneer one just mentioned, in which it had repeated the suggestion that the bankruptcy adjudication operates *in rem*.

In the Supreme Court's latest decision, a trustee in bankruptcy brought suit in a state court to recover a preferential transfer made within four months prior to the filing of the bankruptcy petition. The defendant denying that the bankrupt was insolvent when the payments were made, the trustee offered in evidence the adjudication, together with the petition and master's report upon which it was founded. The petition alleged, and the master found, that the debtor had been insolvent for four months prior to the filing of the petition. The defendant was not a party to the bankruptcy proceedings, and had taken no part therein. The trial court held that this evidence not only was admissible, but was conclusive that the debtor had been insolvent for the four months' period, and hence entered judgment for the trustee.[7] The Supreme Court reversed that judgment; holding that the evidence was not conclusive, but declining to pass on whether it was admissible as tending to prove insolvency.

So far as concerned the Supreme Court's previous decisions, as

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[1] Shawhan *v.* Wherritt (1849) 48 U. S. 627.

[2] Manson *v.* Williams (1909) 213 U. S. 453, 29 Sup. Ct. 519.

[3] *E. g.*, Fidelity & Deposit Co. *v.* Queens County Trust Co. (1919) 226 N. Y. 225, 232.

[4] Johnson *v.* Gratiot County Bank (1916) 193 Mich. 452, 160 N. W. 544.

[5] Cook *v.* Robinson (C. C. A. 1912) 194 Fed. 785; *in re* American Brewing Co. (C. C. A. 1902) 112 Fed. 752; Bear *v.* Chase (C. C. A. 1900) 99 Fed. 920.

[6] Shawhan *v.* Wherritt, *supra*, footnote 1; Michaels *v.* Post (1874) 88 U. S. 398; New Lamp Chimney Co. *v.* Ansonia Brass & Copper Co. (1875) 91 U. S. 656, 661. See also Chapman *v.* Brewer (1885) 114 U. S. 158, 5 Sup. Ct. 799.

[7] Johnson *v.* Gratiot County Bank, *supra*, footnote 4.

distinct from remarks, there was nothing to impeach the result just reached. *Shawhan* v. *Wherritt,*[8] to which such remarks may be traced, was governed by the provisions of the Act of 1841, which, in common with contemporary English legislation, provided that transfers by the bankrupt, intervening between the date of the commission of the act of bankruptcy and the adjudication, should be void if the holder of the lien or title thus acquired had notice of the act of bankruptcy at the time he acquired his interest. The bankrupt conveyed a parcel of land, and thereupon certain of his creditors filed a bill in the state chancery court to avoid the transfer as a fraudulent conveyance. Another creditor, however, filed a petition in bankruptcy, relying upon the same fraudulent conveyance as an act of bankruptcy. Thereafter the chancery court decreed a sale of the property, while the bankruptcy court preceeded to an adjudication of bankruptcy and the appointment of a trustee. Each decision necessarily implied that the transferee of the property was bound by the circumstances attendant upon the transfer. The property was purchased by Shawhan at the chancery sale, and thereupon Wherritt, the trustee in bankruptcy, sued for its possession. The lower courts having decided in favor of the trustee, the defendant took the case to the Supreme Court, which affirmed the judgment. The decision was right, because the Bankrupt Act of force annulled the original conveyance, and therefore all subsequent transfers founded thereon were void, despite any decree of a state chancery court. The real question was not whether the bankruptcy adjudication was or was not a judgment *in rem,* but whether the national statute under which that adjudication was made, was of paramount effect. In *New Lamp Chimney Company* v. *Ansonia Brass & Copper Company,*[9] a plea was interposed to an action of assumpsit, that the defendant had been adjudicated a bankrupt and the plaintiff had proven in the bankruptcy and received a dividend. The general term of New York allowed a recovery for the amount of the debt less the dividend, on the ground that the federal court had lacked jurisdiction to adjudge the defendant bankrupt. The New York Court of Appeals affirmed this judgment[10] and the defendant took the case to the Supreme Court. That court also affirmed the judgment, not on the ground that the bankruptcy court's jurisdiction could be questioned, but that under a proper interpretation the provision of the Bankrupt Act of 1867, as it then stood, which apparently denied the right to a creditor, who had proven in the bankruptcy, thereafter to sue the bankrupt, did not apply to the case at bar. The question was simply one of statutory interpretation; the court, although of course not admitting it, being subconsciously aided by the facts that the Act's remarkable provision actually had been repealed *pendente lite.*

The real point of the case under review is revealed by an exam-

[8] *Supra,* footnote 1.

[9] *Supra,* footnote 6.

[10] Ansonia Brass & Copper Co. *v.* New Lamp Chimney Co. (1873) 64 Barb. 435; *aff'd.* (1873) 53 N. Y. 123.

ination of the rule which the Supreme Court already had established in *Michaels* v. *Post* and *Chapman* v. *Brewer*.[11] In each case it was held to be no defense, to an action brought by a bankruptcy trustee to recover assets belonging to the bankrupt estate but in the defendant's possession, that the adjudication of bankruptcy had been made upon the petition of one who was not in fact a creditor. These two decisions are exactly in line with the proposition which the Supreme Court now declares to mark the bounds of the idea that the adjudication operates *in rem*. So far as the adjudication declares the status of the debtor as a bankrupt, strangers may not attack it collaterally, but it does not bind them "as to the facts or as to the subsidiary questions of law on which it is based".[12]

That is quite consistent with the basic proposition of bankruptcy. Its primary object, a fair distribution of the debtor's property among his creditors, can be accomplished only by legislation which annuls the debtor's title to his property and lodges it in an officer of the court for the purposes of distribution. The trustee in bankruptcy, therefore, derives his title from a statutory process of investiture; and the adjudication of a bankruptcy is simply a judicial declaration that the conditions, prescribed by the statute for this transfer of title, have been fulfilled. Since the statute acts at once upon all sorts and conditions of property in which the bankrupt has an interest, its application in the particular case must necessarily be determined by one court and then for all time. When the statute designates, as such laws always do, a particular court which shall make this decision, it necessarily forbids any other court from reaching a contrary judgment with respect to the particular debtor and anything that he may have.

The same proposition is essentially involved in the decree of a court of probate. That court's function, in ancient days confined to personal property but now statutorily enlarged to the probate of wills of real estate as well, is to decide whether the testamentary instrument shall be admitted to probate or letters of administration granted. Only one court can act in the matter, for the same reason that only one court can determine whether or not a man is a bankrupt. Nor is this likeness altered by the laws in force in many of our states, which extend the jurisdiction of probate courts to the administration of the decedent's estates. Such a statute simply removes from the chancery court an administrative jurisdiction which under its own precedents it would otherwise have had, and places it with a statutory court.[13] In all respects, therefore, a decree of probate operates like an adjudication of bankruptcy; there is room for but one court to make the particular decree, and hence no other court can question it. Such is the interpretation which of necessity must be given to any statute which confers upon a court the power to make a decree generative of a distribution of assets.

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[11] *Supra*, footnote 6.

[12] Gratiot County Bank *v.* Johnson (1919) 39 Sup. Ct. 263.

[13] Glenn, Creditors' Rights § 301.

But beyond that, the decree should not operate to bind anyone who had not joined in the contest which it decided. For purposes of administration, as the Supreme Court now tells us, the statute speaks through the decree, and the latter consequently has "a legislative effect." It is, however, quite different to say that a stranger is bound by any finding of fact established by the judgment. The rule which requires the stranger to respect the status or title conferred by the adjudication, does not extend to his being bound by the reasoning which lead up to the decree.[14] As he was not heard on such questions, he should not be denied a chance to discuss them; it is enough if he is required to respect the title which the judgment confers upon the trustee, executor, or other officer of administrative functions.

Such is the law as we now have it; and no longer should any court speak of an adjudication of bankruptcy as establishing anything but that the trustee is properly in office and clothed with a title to all the estate that was of the bankrupt. Beyond that the Supreme Court did not go. It refrained from deciding whether the adjudication, as read in the light of the master's report and the petition upon which it was founded, was admissible as rebuttable evidence of insolvency during the four months' period.

A footnote reference, however, to cases holding that the bankrupt's schedules are admissible to show insolvency in a suit by the trustee against the third party[15] suggests a hint that the adjudication is competent in that regard. This does not accord with strict logic, but the proposition may be regarded as established by such a weight of tradition, if not of authority, as to constitute an acceptable rule of adjective law.

G. G.

THE MEANING OF "CAUSED BY IT" IN SEC. 20 OF THE ACT TO REGULATE COMMERCE.—While at common law the common carrier's duty to carry was limited by its holding out and, therefore, it was not bound to carry beyond its own lines,[1] the carrier was bound to receive and carry goods to the end of its line and there forward them,[2] in which case it was not responsible for the goods in the possession of succeeding carriers[3] unless it voluntarily contracted for through trans-

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[14] Brigham *v.* Fayerweather (1886) 140 Mass. 411, 5 N. E. 265; Tilt *v.* Kelsey (1907) 207 U. S. 43, 28 Sup. Ct. 1.

[15] Hackney *v.* Hargreaves (1907) 68 Neb. 633, 99 N. W. 675; *in re* Docker-Foster Co. (D. C. 1903) 123 Fed. 190.

[1] Mulligan *v.* Illinois Cent. Ry. (1873) 36 Iowa 181.

[2] Seasongood, Stix, Krouse Co. *v.* Tennessee & Ohio River Trans. Co. (1899) 21 Ky. L. R. 1142; Railroad Co. *v.* Manufacturing Co. (1872) 83 U. S. 318; Rawson *v.* Holland (1875) 59 N. Y. 611.

[3] Myrick *v.* Michigan Cent. R. R. (1882) 107 U. S. 102, 1 Sup. Ct. 425.